ing rights and equities of creditors. *American Trust & Savings Bank* v. *McGettigan*, 152 Ind. 582. But when once *in custodia legis* it ceases to be subject to seizure and sale on execution without leave of court. *Chalmers* v. *Littlefield*, 103 Me. 271. In their determination of the precise stage in receivership proceedings at which property comes into *custodia legis*, the courts disagree. Maryland, following the old rule, places it at the time when the receiver actually takes possession of the property. *Farmers' Bank* v. *Beaston*, 7 Gill & J. (Md.) 421. The majority of the courts now accept the appointment of the receiver as marking the transition. *Squire* v. *Princeton Lighting Co.*, 72 N. J. Eq. 883. An increasing number of modern decisions, however, place the time as early as possible, and adopt the filing of the bill and service of process as the moment of the passing of the property into the custody of the court. *Riesner* v. *Gulf, Colorado & Santa Fé Ry. Co.*, 89 Tex. 656. This last view recognizes that a greater advantage is obtained by keeping the property intact while the court is deliberating as to its disposition, though the bill may finally be dismissed, than by allowing individual creditors more time in which to go against the property.

SHIPPING — LIABILITY OF SHIPPER OF DANGEROUS GOODS. — The defendant, a transportation company, shipped on a common carrier's barge ferro-silicon, billed as "ordinary cargo." The fumes killed the barge-owner and injured his wife. The defendant knew the name of the chemical, but was ignorant of its dangerous qualities. There was no negligence. *Held*, that the wife can recover. *Bamfield* v. *Goole & Sheffield Transport Co.*, [1910] 2 K. B. 94.

A shipper who knows of the dangerous nature of his goods is liable for any damage resulting from his omission to give notice to the carrier. *Boston & Albany R. Co.* v. *Shanly*, 107 Mass. 568; *Farrant* v. *Barnes*, 11 C. B. N. S. 553. But where neither *scienter* nor negligence is alleged, it has been doubted whether a shipper would be liable. *Per* CROMPTON, J., in *Brass* v. *Maitland*, 6 E. & B. 470, 491; LORD ELLENBOROUGH, C. J., in *Williams* v. *East India Co.*, 3 East 192, 200. The decision in the principal case, however, is not without precedent. *Pierce* v. *Winsor*, 2 Spr. (U. S.) 35; *Brass* v. *Maitland*, *supra*. See *Hearne* v. *Garton*, 2 E. & E. 66. The court rested its decision upon the ground that there was an implied warranty that the goods were safe, and that the shipper was liable for damage occurring from a breach of that warranty. This broad rule is unnecessary for the decision of the case. Billing ferro-silicon as "ordinary cargo" constituted a misrepresentation, and for damage resulting from the carrier's reliance on this description, the shipper should be liable. To imply a warranty that the goods are safe is subject to the two objections that it presumes as a fact what may not be the fact, and that it imposes undue hardship on the shipper.

STATUTES — INTERPRETATION — "PERSON OF THE NEGRO OR BLACK RACE." — A statute made concubinage "between a person of the Caucasian or white race and a person of the negro or black race" a felony. *Held*, that an octoroon (or person having one-eighth negro blood) is not a person of the negro or black race within the meaning of the statute. *State* v. *Treadaway*, 52 So. 500 (La.).

Most of the statutory definitions of the word "negro" are broad enough to include an octoroon. CODE OF ALA., 1907, § 2; GEN. STATS. FLA., 1906, § 1. But wherever the question has been considered by the courts independently of statutory definitions, their conclusions have been in accord with the principal case. *Felix* v. *State*, 18 Ala. 720; *Monroe* v. *Collins*, 17 Oh. St. 665. The miscegenation statutes of other states, where there is no arbitrary definition of the word "negro," to include a case like the present, invariably add to "negro" the words "or mulatto," "or person of negro descent to the third generation inclusive," or the like. STATS. KY., 1909, § 4615; REV. STATS. MO., 1899,

§ 2174; CODE OF TENN., 1896, § 4186. That the terms "negro" and "colored person" have been regarded as interchangeable in Virginia is due to the narrow statutory definition of the latter term in that state — "a person with one-fourth or more of negro blood." CODE OF VA., 1873, c. 103, § 2; *Jones* v. *Commonwealth*, 80 Va. 538. The case is not weakened by the court's admission that in ordinary social regulations the word "negro" might receive a different interpretation. *Cf.* PEN. CODE TEX., 1895, §§ 347, 1010. The decision, furthermore, is sustained by the rule that penal statutes are to be construed strictly in favor of the accused. See ENDLICH, INTERPRETATION OF STATUTES, §§ 329–339.

TENANCY IN COMMON — POSSESSION BY ONE TENANT: LIABILITY TO CO-TENANTS FOR USE AND OCCUPATION. — In partition proceedings between tenants in common, a claim for rent was made against one of the parties, who had occupied the premises alone, but without unlawful exclusion of his co-tenants, and under no agreement as to rent. *Held*, that the claim should be denied. *Field* v. *Field*, 8 East. L. Rep. 374 (Prince Ed. Is., Ct. Ch.).

At common law, if one tenant in common occupied all the land, a co-tenant had no remedy unless he had been ejected or had appointed the other his bailiff. COKE LIT. 199 b. By statute of 4 Anne, c. 16, § 27, an action was allowed against a co-tenant "for receiving more than comes to his just share or proportion." But as construed in England and some states, this applies only when rent or other profit is received from a third person. *Henderson* v. *Eason*, 17 Q. B. 701; *Badger* v. *Holmes*, 72 Mass. 118. The decision in the principal case is in accord with the prevailing view. *Israel* v. *Israel*, 30 Md. 120; *Reynolds* v. *Milmeth*, 45 Ia. 693. But by statute in some states, and by judicial decision in others, a sole occupying tenant is liable for use and occupation. R. I. GEN. LAWS, 1909, c. 337, § 1; *Gage* v. *Gage*, 66 N. H. 282. Considerations of fairness commend this result. According to the legal conception of tenancies in common, however, each co-tenant has a right to every part of the common property. If one is left in sole possession, therefore, he does not exceed his rights in occupying the whole.

TRADE SECRETS — REMEDIES FOR DIVULGENCE. — The plaintiff, who owned a secret formula for making medicine, agreed to tell the secret to the defendant and to use the medicine in his sanitarium. In return the defendant promised to keep the formula secret and to pay the plaintiff certain wages and a commission. The defendant divulged the formula. *Held*, that the plaintiff can recover in tort. *Roystone* v. *Woodbury Institute*, 67 N. Y. Misc. 265 (Sup. Ct.).

The duty to refrain from divulging trade secrets is imposed by law as an incident to any confidential relationship. *Morison* v. *Moat*, 9 Hare 241; *Abernethy* v. *Hutchinson*, 3 L. J. Ch. 209, 219. An express promise of secrecy would seem but an iteration of the duty already existing, and of itself, therefore, no legal consideration to support a promise in return. See *Thum Co.* v. *Tloczynski*, 114 Mich. 149, 157. But if there is further and sufficient consideration, a contract of secrecy gives but an alternative remedy. *Peabody* v. *Norfolk*, 98 Mass. 452, 460. See MECHEM, AGENCY, § 476. From the nature of the right protected, relief is generally sought in equity. The failure of the courts to point out clearly whether the basis of equitable relief is by way of injunction to prevent a breach of the relational duty, or of specific performance of the valid contract between the parties, has led to confusion as to the nature of the right. *Morison* v. *Moat*, *supra*. See 11 HARV. L. REV. 262; 20 *id.* 143. The main case recognizes that the right does not necessarily rest upon contract, but exists as an incident to a confidential relationship.

WATERS AND WATERCOURSES — TIDAL WATERS — RIGHT OF FEDERAL GOVERNMENT TO IMPROVE NAVIGATION. — The defendant was under con-